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OIC-78-0045/3
FOIA
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16 JAN 1978

MEMORANDUM FOR: Legislative Counsel

FROM: John N. McMahon
Deputy Director for Operations

SUBJECT: Amendments to the Freedom of Information Act.

REFERENCE: OLC Memorandum # 77-5748, dated
30 December 1977.

1. (C) This responds to referent request for comments and suggestions on possible amendments to the Freedom of Information Act.

2. (C) The Directorate has in the past contributed to a number of Agency memoranda concerning the impact of the Freedom of Information Act on Directorate activity. Additional experience in coping with the provisions of the Act has confirmed the observations in those earlier memoranda, among which we note particularly from last year [redacted]

3. (C) We further note the nearly 65 percent increase in Freedom of Information requests in 1977 as compared with 1976. Much of the work which is responsive to FOIA requests falls to this Directorate, which has observed that most requests now originate with readily discernible categories of persons. Among them are members of the media. The selective publicity given to portions of material released under the Act has, we know from field station commentary, begun to erode confidence in the Directorate's ability to protect both operational and intelligence information.

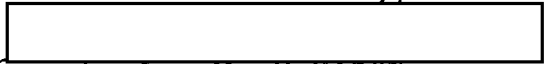
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4. (C) Some misconceptions are associated with the loss of confidence, of course. We cannot hope to dispel all of them. However, a successful legislative achievement of additional protection of operational activity would tend to reassure both actual and potential clandestine assets and foreign liaison services. A form of reassurance becomes especially necessary now that we face the first instance of judicial review of exemptions asserted under the Act by this Directorate in order to protect classified material and sources and methods (Morton H. Halperin v. Central Intelligence Agency, et al.). As you know, the hazard in the case of judicial review is that the court may substitute its own decisions for those of the Agency concerning the propriety of classification or other asserted exemptions. Insofar as intelligence activity of the United States is concerned, it does not seem likely that the legislative intent was that inexperience be substituted for experience in making determinations of this nature. Accompanying this memorandum at Tab A is a summary of recent instances, appropriately sanitized, of the loss of confidence that gives us concern.

5. (C) Previous suggestions regarding procedural clauses of the Act continue to merit consideration for amendatory action. We think, however, that a broader approach may provide more effective relief with respect to protection of sources and methods and classified information. You will recall that, in contrast to the Freedom of Information Act, the Privacy Act, with its laudable goals, authorizes the Director to exempt systems of records maintained by CIA from certain provisions of the Act. Director Colby exempted CIA records systems from some but not all of those provisions. The Privacy and Freedom of Information Acts should be consistent. To achieve consistency, the DCI should be given the same authority under the Freedom of Information Act that he has under the Privacy Act. We suggest that this avenue toward amendment of the FOIA be explored. To that end, I have instructed experienced personnel of the Directorate to provide whatever additional supportive commentary you may find useful.


John N. McMahon

Attachment: Tab A

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C O N F I D E N T I A L

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REPORTED INSTANCES OF THE IMPACT OF INFORMATION
DISCLOSURES PARTICULARLY UNDER THE
FREEDOM OF INFORMATION ACT

NOTE: Paraphrased from reports by Headquarters units, the following examples of the impact on Directorate of Operations of disclosures, principally under the Freedom of Information Act, still have sensitivity. These examples should retain the present classification unless a specific release is acquired from the responsible unit of the Directorate.

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OLC 77-5748

30 December 1977

MEMORANDUM FOR: Morning Meeting Participants


FROM: George L. Cary
Legislative Counsel

SUBJECT: Amendments to the Freedom of
Information Act

1. (C) In a recent meeting with the Chairman of the Senate Select Committee on Intelligence, the Director expressed serious concern about the impact of the Freedom of Information Act on Agency activities, not only from the standpoint of the man-hours involved in record searches, reviews, appeals and litigation, but more importantly from the standpoint of the impact which FOIA disclosures were having in the aggregate on our relationships with foreign intelligence services and cooperating individuals.

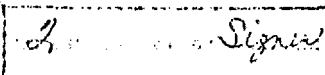
2. (C) Chairman Inouye was both sympathetic and receptive to the Director's concerns and suggested that we draft proposed amendments to the Freedom of Information Act which might resolve some of these problems. This office is currently assessing the impact of FOIA and working on possible amendatory language. An essential part of this process is the argumentation to go with amendatory language stating the impact of the FOIA and giving examples of the difficulties which we have experienced as a result of it.

3. (C) I am aware that there are some differences of opinion as to whether or not FOIA has in fact has a negative or harmful impact on Agency activities and operations. With this in mind I would appreciate receiving your comments and suggestions plus any documentation you can give on your position on this subject by 15 January 1978.


George L. Cary

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Response to OLC Request for Amendments to Freedom of Information Act

FROM:

EXTENSION

NO.

DDO - John N. McMahon

DATE

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

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FORWARDED

1. Office of Legislative Counsel

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